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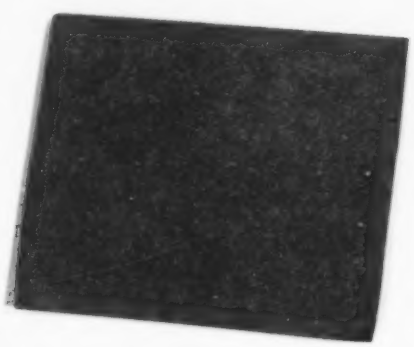
EFFECTIVE FUNCTIONING OF BODIES ESTABLISHED PURSUANT TO UNITED NATIONS HUMAN RIGHTS INSTRUMENTS

Note by the Secretary-General

The Secretary-General has the honour to transmit to the Commission on Human Rights the final report on enhancing the long-term effectiveness of the United Nations human rights treaty system, prepared by an independent expert, Mr. Philip Alston.



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ANNEX

Final report on enhancing the long-term effectiveness of the United Nations human rights treaty system

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I. INTRODUCTION

A. Background

1. This report is submitted by the independent expert, Mr Philip Alston, appointed by the Secretary-General pursuant to General Assembly resolution 43/115 of 8 December 1988 and Commission on Human Rights resolution 1989/47 of 6 March 1989. A first report was submitted to the General Assembly at the forty-fourth session (A/44/668) and an interim report was submitted to the World Conference on Human Rights (A/CONF.157/PC/62/Add.11/Rev.1); both the Assembly and the Commission have subsequently requested the completion of the report. The aim of the study is to identify, in as concise a way as possible, some of the key measures that might be taken to improve the effective functioning of the United Nations human rights treaty system.

2. The report builds upon the two previous reports. For the most part, neither the analysis of nor the recommendations in those reports are repeated herein. The purpose of the present report is to update the previous analyses in light of recent developments and to present specific recommendations in relation to a selected range of issues for consideration by the relevant bodies.

3. The independent expert is currently Chairperson of the Committee on Economic, Social and Cultural Rights, and served as Chairman-Rapporteur of the meeting organized at the time of the World Conference on Human Rights which, for the first time ever, brought together the presidents, chairpersons or their representatives of the African Commission of Human and Peoples' Rights, the European Court of Human Rights and the European Commission on Human Rights, the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights, the six United Nations treaty bodies and the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organization. He has participated in five of the seven meetings of persons chairing the United Nations human rights treaty bodies that have been held to date (in 1988, 1990, 1992, 1994 and 1996). He also served as Chairman-Rapporteur of the Task Force on Computerization established by the Commission on Human Rights in 1989. 1/ Discussions in these various contexts have been invaluable as a source of information in the preparation of the present report.

B. Progress achieved since the previous reports by the independent expert

4. Many of the recommendations contained in the earlier reports have been put into effect. From the 1989 report, they include: the preparation of a study on overlapping provisions of the different treaties and the potential for the use of cross-referencing in reporting; the amendment of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Elimination of All Forms of Racial Discrimination to provide for regular budget funding and the adoption of interim measures to assure the necessary funding; extension of the meeting time available to several of the treaty bodies; advance preparation by most committees of a list of written questions to facilitate the dialogue with the State party;

acceptance of all sources of information as being potentially relevant; the adoption of substantive and focused conclusive observations; and the regular publication of an inventory of all international human rights standard-setting activities.

5. From the 1993 report, reference can be made to: the adoption of specific target dates for the achievement of universal ratification of at least some of the treaties; the continuing search for effective responses to the non-submission of reports, including, if necessary, consideration of the situation in the absence of a report; a diminution in the number of requests directed to States for reports outside the convention-based reporting system; the provision of minimal office facilities for one or two members of the treaty bodies in Geneva; the move towards establishing a documentation facility within the Centre; greater emphasis upon electronic information sources; and other more minor reforms.

6. By the same token, many of the recommendations have remained unaddressed. Some of these are taken up again in the present report.

C. A thumbnail sketch of the present situation

7. Despite the progress that has been achieved in recent years, the principal characteristics of the situation have not changed fundamentally since the independent expert's interim report in 1993. The following elements are significant in this regard:

(a) Since 1993 the number of ratifications has grown by some 26 per cent with the most notable increases occurring in relation to the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. Nevertheless, 31 per cent of States are not parties to either of the International Covenants and almost 50 per cent of States have not become parties to the Convention against Torture;

(b) The operation of the International Convention on the Suppression and Punishment of the Crime of Apartheid has been suspended. This is a blessing for the system as a whole since the delinquency in submitting reports under that Convention was so great that one very experienced observer characterized the situation as a "fiasco"; 2/

(c) No new treaty bodies have been created ard no new treaties providing for the establishment of monitoring bodies have entered into force. The approved meeting time of three of the committees has, however, increased notably;

(d) The number of overdue reports has increased by 34 per cent and the delays experienced by States parties between the submission and examination of their reports have increased to the point where some States will wait almost three years before their reports are examined;

(e) The number of communications being processed under the various complaints procedures has greatly increased and existing backlogs are unacceptably high. At the same time, there is a clear need to create

additional complaints systems in order to ensure that due attention is paid to economic, social and cultural rights and to the full range of women's rights. Specific proposals in relation to both the Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Economic, Social and Cultural Rights are currently under consideration;

(f) The resources available to service this sizeable expansion in the system have actually contracted rather than expanded and there have been consistent calls, escalating in volume and intensity, by the various committees, and especially by the meetings of chairpersons, for increased resources and improved servicing to be made available;

(g) At the same time, conference servicing officials in Geneva have proposed that a limit of an average of 50 pages per State party report be imposed. The production of summary records is now confined to two languages (English and French) and the translation into the second language (whichever one it might be) is generally significantly delayed.

8. The extent of the shortcomings inherent in the treaty monitoring system has led some observers to propose radical solutions. Thus, for example, in 1994 one commentator proposed, inter alia, that States which do not satisfy a set of minimum requirements drawn from the relevant treaties should be expelled from the treaty regime; the system of State reporting should be discontinued; the treaty bodies should undertake on-site fact-finding in every State party; and acceptance of a right to petition under all six treaties should be made mandatory. 3/ Writing in August 1996, in a report for the International Law Association, the same commentator considered there to be an "implementation crisis ... of dangerous proportions". 4/ In her view, "the treaty regime has been depreciated by chronic levels of non-compliance, both with the substantive terms of the treaties, and with existing enforcement mechanisms". 5/ Other observers have been much more optimistic about the potential of the supervisory system to achieve its objectives. 6/

D. The premises upon which this report is based

9. The present report is based upon several premises. The first is that the basic assumptions of the treaty supervisory system are sound and remain entirely valid. In other words, the principle of holding States accountable for non-compliance with their treaty obligations by means of an objective and constructive dialogue, on the basis of comprehensive information and inputs from all interested parties, has been vindicated in practice and has the potential to be an important and effective means by which to promote respect for human rights. The potential contribution that it can make has not in any way been superseded by other approaches or mechanisms that have been created. The second premise is that considerable achievements have been recorded by all of the treaty bodies in recent years, although there has been significant unevenness in that regard. The third is that progress, both in improving the quality and effectiveness of monitoring and in reforming the procedures and institutions, is inevitably a gradual process and there are no "miracle cures" to be found.

10. The fourth premise is that the present system is unsustainable and that significant reforms will be required if the overall regime is to achieve its

objectives. This is a function of several developments including the immense expansion of the human rights treaty system in a period of less than two decades, the expanding reach and increasing demands of regional human rights systems, the proliferation of reporting obligations in other contexts, especially in the environmental field, and the increasing pressures upon Governments and the United Nations system to reduce their budgetary outlays and streamline their programmes. The treaty bodies cannot, and nor should they seek to, remain immune to these pressures.

11. Indeed, predictions as to likely future levels of resource availability are critical to any assessment of what needs to be done in relation to the treaty system. While firm predictions are difficult at best, there is very little cause to think that there will be a dramatic increase in existing resource levels in the years ahead. In part this is a reflection of global budgetary pressures and their impact on the United Nations as a whole. But, more significantly, it reflects the perhaps inevitable, although nonetheless short-sighted and regrettable, reluctance of Governments to provide adequate resources for the development of mechanisms which might be able to monitor their human rights performance more effectively.

12. In many respects, this is the key issue both for those who are persuaded of the need to reform the system and for those who are not. In considering the future of the treaty supervisory system, much depends upon the assumptions that are made as to the future availability of resources. If it is assumed that, over time, even if not in the immediate future, considerably more resources will be made available, then the focus should be upon seeking to perfect, or at least improve, the system in the form in which it is currently developing. But if the assumption is that the existing level of funding is unlikely to be increased in the years ahead, then the current system is simply not sustainable and we will witness a steady diminution in the support available to each treaty body and in the ability of each to function in a meaningful way.

13. Before examining specific reform proposals, it is appropriate to recall the cautionary comment made earlier by the independent expert in his interim report that the quest for reform "must not be embarked upon without acknowledging the very considerable achievements to date and the importance of proceeding with sensitivity and sophistication in order to ensure that the fundamental integrity of the system, and particularly its ability to safeguard human rights, are not sacrificed to illusory notions of streamlining and efficiency" (A/CONF.157/PC/62/Add.11/Rev.1, para. 12).

II. MAJOR CURRENT POLICY ISSUES

A. Towards universal ratification

14. Universal ratification of the six core United Nations human rights treaties would establish the best possible foundations for international endeavours to promote respect for human rights. In his interim report in 1993 the independent expert recommended that the year 2000 be set as a target date for achieving that objective. In the event, the World Conference on Human Rights, in the Vienna Declaration and Programme of Action, endorsed three sets of measures in relation to ratification:

(a) it set the following goals: the year 1995 as the target date for universal ratification of the Convention on the Rights of the Child (Part I, para. 21), the year 2000 as the target date in relation to the Convention on the Elimination of All Forms of Discrimination against Women (Part II, para. 39) and, in relation to the others, urged "the universal ratification of human rights treaties" (Part I, para. 26);

(b) it "strongly recommend[ed] that a concerted effort be made to encourage and facilitate the ratification of and accession or succession to international human rights treaties and protocols adopted within the framework of the United Nations system with the aim of universal acceptance. The Secretary-General, in consultation with treaty bodies, should consider opening a dialogue with States not having acceded to these human rights treaties, in order to identify obstacles and to seek ways of overcoming them" (Part II, para. 4);

(c) it also recommended that when the five-year review of the implementation of the Vienna Declaration and Programme of Action is undertaken in 1998 "[s]pecial attention should be paid to assessing the progress towards the goal of universal ratification ..." (Part II, para. 100).

15. Since the Vienna Conference there has been a very significant improvement in the ratification rate of the principal treaties. On 1 January 1993 there were 678 States parties to the six treaties. By 30 June 1996 this figure had risen to 853, an increase of 175 or 26 per cent. This constitutes an impressive achievement but there is also another side to the coin which is illustrated by the fact that 31 per cent of States (59 out of 193) have not become a party to either of the two International Covenants on Human Rights, despite their centrality to the overall human rights regime.

16. Equally surprising is the fact that almost 50 per cent of States (95 out of 193) have not become parties to the Convention against Torture. When it is recalled that the Convention on the Rights of the Child contains a comprehensive prohibition against torture in the case of all persons covered by that treaty (in essence, all persons below the age of 18), it is not clear why so many States can accept that obligation but not the equivalent obligation in the Convention against Torture. Similarly, there are 36 States which have accepted the obligation not to torture under the International Covenant on Civil and Political Rights but have not yet ratified the Convention against Torture.

17. The increase in the total number of ratifications also needs to be viewed in the light of three important factors which partly account for the success. The first is that a number of new States succeeded to the treaties during this period, thus expanding the number of total ratifications but not thereby reducing the number of States which had not become parties to the various treaties by the time of the Vienna Conference. The second factor is the impact of the Fourth World Conference on Women, both before and after the event, in terms of encouraging States to ratify the Convention on the Elimination of All Forms of Discrimination against Women. Ratifications of the Convention went from 114 on 1 January 1993 to 153 on 30 June 1996, an increase of 39 States parties, or 34 per cent. The Beijing Platform for Action called for universal ratification of the Convention by the year 2000.

18. The third factor is the extraordinary success of efforts to promote ratification of the Convention on the Rights of the Child. As a result, 30 per cent of the overall increase in ratifications during this three and a half year period (53 ratifications) was attributable exclusively to that Convention, the number of States parties to which went from 134 to 187. Taken together those two conventions accounted for 92 of the new ratifications, or some 53 per cent.

19. There are some important lessons to be learned from the successes achieved in relation to the two conventions which have attracted so many new ratifications in recent years. The first concerns the importance of political will, whether expressed through the holding of international conferences which place appropriate emphasis upon the convention in question or through consistent efforts by international organizations. In contrast, the lead-up to international conferences focusing on social development (Copenhagen) and human settlements (Istanbul) saw no attention at all to efforts to promote ratification of the relevant human rights treaties. The second lesson concerns the importance of mobilizing domestic constituencies (in this case, women's and children's non-governmental organizations) in support of the goals and mechanisms reflected in the treaty, thus making it easier for Governments to undertake ratification.

20. The third lesson, and in the case of the Convention on the Rights of the Child the most important, concerns the provision of assistance and advice by an international agency, which in this instance was the United Nations Children's Fund. Such agencies can, whenever requested, assist Governments and the principal social partners in various ways, including: by explaining the significance of the treaty as a whole and of its specific provisions; by promoting an awareness of the treaty which facilitates domestic consultations and discussions; by shedding light upon the requirements of the treaty in the event of ratification; by providing assistance to enable any necessary pre-ratification measures to be identified and implemented; by assisting in relation to the preparation of reports, both indirectly through the agency's own situation analyses, and directly through the provision of expert assistance where appropriate; and by reassuring developing countries in particular that ratification should bring with it enhanced access to at least some of the expert or financial resources needed to implement key provisions of the treaty.

21. In this respect the success of the effort to promote ratification of the Convention on the Rights of the Child indicates that there is no (or at least no longer) deep-rooted resistance to the principle of participation in human rights supervisory arrangements. Given the relative comprehensiveness of the Convention, along with the integral links between respect for children's rights and those of the rest of the community, it might be thought that the reasons which had previously led various States not to ratify all six of the core human rights treaties are no longer compelling and that there will be a new openness to increased participation in the overall treaty regime. Indeed, there is something odd about a situation in which all States but four have become parties to such a far-reaching Convention while almost one State in every three has not become a party to either of the two International Covenants.

22. The success of the Convention on the Rights of the Child, and the factors that contributed to that success, would also seem to vindicate the following analysis contained in the independent expert's interim report to the Vienna Conference:

> "Among the reasons that might well be impeding ratification or accession in some countries are the following: a lack of understanding of the implications of the instrument on the part of mid-level officials who would need to prepare the ground before the Government could act; a lack of trained personnel who could explain the implications of ratification with the necessary sophistication and detail to the relevant government minister; the existence of an element of confusion between the treaty body procedures and the special procedures of the Commission on Human Rights; a low budget priority for the measures needed to precede or accompany ratification or accession, such as the undertaking of a survey of existing law and practice, the drafting of necessary legislation or regulations, the training of officials, etc.; the lack of an informed domestic constituency which would support government proposals to ratify or accede to an instrument; and a fear that the reporting obligations would be too onerous for the country concerned" (A/CONF.157/PC/62/Add.11/Rev.1., para. 84).

23. The emphasis upon promoting universal ratification is an essential one in order to strengthen and consolidate the universalist foundations of the United Nations human rights regime. Despite the fears of some critics, the quest for universal ratification need not have any negative consequences for the treaty regime as a whole. One such critic, Professor Bayefsky, has argued that the "implementation crisis" which she perceives to exist is due in part to "a deliberate emphasis on ratification' which for many States, has "become an end in itself, a means to easy accolades for empty gestures". 7/ In her view, ratification is often "purchased at a price, namely, diminished obligations, lax supervision, and few adverse consequences from non-compliance". 8/ But such an analysis would seem to confuse two processes which should remain, and for the most part have remained, separate. It is difficult to accept the proposition that the treaty bodies have been lax in their supervision in order to entice more States to accept the obligations in question. Indeed, the experience of the Convention on the Rights of the Child would seem clearly incompatible with such an analysis. The Committee on the Rights of the Child has, to date, been one of the most demanding and conscientious of the treaty bodies, but this has in no way impeded the dramatic movement towards the achievement of near-universal ratification of the Convention. In the view of the independent expert more, rather than less, should be done to explore ways in which to overcome the legitimate, as cpposed to the inappropriate, concerns of certain identifiable groups of countries that have so far been reluctant to ratify.

24. Perhaps the most obvious such group consists of those States with a population of 1 million or less. Twenty-nine such States have not ratified either of the two International Covenants on Human Rights. As of 1996, 21 of those were estimated to have a Gross National Product per capita of below US$ 5,000 per annum, and with 11 of them being below the $2,000 per annum level. 9/ In relation to those States the independent expert recalls the analysis contained in his interim report:

"Provided that the usual caveats in relation to such generalizations are kept in mind, several conclusions might reasonably be drawn from this data. Firstly, at least some of these small States are probably concerned that the legal, bureaucratic and administrative requirements involved are too onerous given the size of their population. Secondly, the reporting requirements might well act as a significant deterrent in such cases. Thirdly, the ... States with very low populations and low per capita GNP might be strongly influenced by the resource implications of ratification" (A/CONF.157/PC/62/Add.11/Rev.1, para. 87).

25. This in turn raises the question of whether the international community should be providing resources to facilitate the ratification of treaties by such States and to assist them in meeting the subsequent reporting burden, at least initially. Curiously, it has yet to be acknowledged that such activities, which are essential to laying the foundations for a stable and peaceful world in which human rights are respected, should be funded adequately within the United Nations framework. It almost seems to be thought that efforts to promote the acceptance of human rights norms would somehow be tainted if progress were purchased at a price, in terms of the necessary technical assistance. In contrast, the principle was recognized long ago in the environmental area in which many of the arrangements made in relation to key treaties provide for financial and other forms of assistance to help States to undertake the necessary monitoring, to prepare reports and to implement some of the measures required in order to ensure compliance with treaty obligations.

26. Thus the principal question in the present context is what measures might be taken in order to facilitate achievement of the oft-confirmed goal of universal ratification of the six core treaties? Following the World Conference on Human Rights, the General Assembly, in resolution 48/121 of 20 December 1993, endorsed the Vienna Declaration and Programme of Action (para. 2) and requested the Secretary-General to implement the relevant recommendations (para. 9). At that time, provision was made to undertake a study on the encouragement of ratifications, as well as a study on questions relating to reservations, and for two regional meetings to be held around these issues. In the intervening three years neither of these studies has been commissioned and only one of the regional seminars has been held. It took place in Addis Ababa in May 1996 and focused on the African region. The four-day meeting did not produce any official report, but informal reports indicate that the significance of the various elements identified above was strongly affirmed.

27. Before examining specific measures that might be taken to promote universal ratification it is appropriate to consider the existing and potential contribution made in this regard by bodies other than the High Commissioner for Human Rights. One of the major consequences of the ending of the Cold War has been the greatly increased attention given to the human rights dimensions of their activities by intergovernmental bodies which are not per se part of the human rights framework as narrowly defined. This is specifically reflected in the coordination mandate given to the High Commissioner for Human Rights by the General Assembly in resolution 48/141. Similarly, agencies such as the United Nations Development Programme (UNDP) and the World Bank have acknowledged the importance of

respect for human rights (and of intimately related issues such as democratization, governance and the rule of law) in the broad context of their own programmes. Curiously, however, those agencies have never viewed the commitment to promote the universal ratification of the core treaties as something of direct relevance to their own work. Yet, to take one example, the centrality of the rights recognized in the Convention on the Elimination of All Forms of Discrimination against Women to the programmes of those agencies is such that it might reasonably be expected that they would have adopted some active measures aimed at encouraging ratification. The same applies in relation to the two International Covenants on Human Rights.

28. The vital importance of the role that might potentially be played by these agencies in promoting the achievement of universal ratification has been recognized by the chairpersons of the treaty bodies. At their sixth meeting, in 1995, the chairpersons recommended that such a role be played and in that regard recommended that, at their seventh meeting, "a dialogue [should] take place with senior officials of key organizations and agencies, to include, inter alia", the UNDP (A/50/505, para. 18). Yet, at the seventh meeting, UNDP, the World Bank and FAO were not represented, and the WHO and UNESCO representatives were present only briefly and did not speak. In other words, there was no dialogue at a senior level, and indeed no dialogue at all on the contribution that might be made by the agencies to the promotion of universal ratification. Similarly, although a UNDP senior official addressed the sixteenth session of the Committee on the Elimination of Discrimination against Women (in January 1997) and was asked about the potential role of that agency in encouraging ratifications or assisting States in the preparation of reports, the relevant press release (WOM/948)records no response.

29. A related question that should also be addressed is whether those agencies which have played an active role in the promotion of specific human rights treaties - most notably UNICEF in relation to the Convention on the Rights of the Child and ILO in relation to ILO conventions - could not also take it upon themselves to explicitly encourage the ratification of key treaties such as the two International Covenants and the Convention on the Elimination of All Forms of Discrimination against Women.

30. Regional organizations might also be asked to contribute to the effort to encourage universal ratification. The Organization for Security and Cooperation in Europe (OSCE) is particularly relevant in that regard. Since its considerable human rights-related activities are not based on formally binding instruments its various normative and other pronouncements have relied extensively upon the International Covenants and other treaties. It would seem especially appropriate, therefore, for a joint effort to be made by the OSCE and the United Nations in regard to ratification of the six core United Nations treaties.

31. A variety of recommendations relating to universal ratification follow from the foregoing analysis.

32. The High Commissioner on Human Rights should be requested to consult specifically with the relevant international agencies, including UNDP, the World Bank, UNESCO, WHO and FAO, with a view to ascertaining what initiatives, if any, they might be prepared to take in order to encourage States with which

they are dealing to ratify any of the six core treaties to which they are not already a party. The High Commissioner should be asked to report in writing to the eighth meeting of chairpersons, expected to be held in September 1997.

33. The dialogue recommended by the World Conference on Human Rights for the purpose of identifying "obstacles and to seek ways of overcoming them" must be undertaken. It should be approached in a systematic, even-handed and constructive manner. Given the resource constraints, which partly explain the absence of any organized or systematic dialogue to date, it is recommended that a specific trust fund be established for the purpose of employing two advisers to the High Commissioner on ratification and reporting. Their tasks would be to assist States in the ways outlined above. One of these persons would be a political adviser and the other a technical expert with the capacity to undertake or oversee pre-ratification surveys as well as the preparation of initial reports. This unit should be established for a three-year period with sufficient earmarked funding to enable assistance to be provided in national capitals rather than in Geneva. The special advisers on ratification should be urged to adopt clear priority groups of countries in order to maximize the effectiveness of their activities.

34. Specific funding should be earmarked from the advisory services programme to support the preparation of initial reports by newly-ratifying developing countries. Since the preparation of subsequent reports is, in most respects, considerably less demanding, and would be greatly facilitated by the experience gained in connection with the initial report, the subsequent reporting burden would not be unduly onerous.

35. The meeting of chairpersons should be asked to consider various ways in which the reporting process might be streamlined and made less burdensome in relation to all States with populations of 1 million or fewer people.

36. The special advisers on ratification and reporting should explore and report on the most appropriate methodology by which to enable those 32 States which have ratified either the International Convention on the Rights of the Child alone or that Convention and only one other treaty (in most cases either the International Convention on the Elimination of All Forms of Racial Discrimination or the Convention on the Elimination of All Forms of Discrimination against Women) to prepare a consolidated report which, by building upon the one or two reports they are already obliged to prepare, would enable them to become parties to the remaining treaties without thereby significantly increasing their reporting burden.

B. Responding to the problem of significantly overdue reports

37. Most of the committees continue to express concern over the consequences of the large number of significantly overdue reports. Table 1, below, shows the extent of the problem at the time of the independent expert's interim report in 1993 in comparison with the situation at the end of 1996.

Table 1: The trend in relation to overdue reports, 1993-1996

Treaty	State parties		Parties with overdue reports		Total overdue reports	
	1993	1996	1993	1996	1993	1996
ICESCR	119	134	65	97	65	115
ICCPR	115	134	64	84	83	114
CERD	132	147	112	126	342	401
CEDAW	118	153	78	115	127	189
CAT	71	98	36	61	38	67
CRC	126	187	59	71	59	71
Total	680	853	414	554	714	957

38. In its 1996 annual report (A/51/44) the Committee against Torture noted in paragraph 1 that there were 96 States parties and in paragraph 21 that there were 55 States with overdue reports. The Committee went on to deplore the failure of those States whose reports were more than four years overdue and recounted how numerous reminders had been sent by the Secretary-General and various letters sent by the Chairman of the Committee. The Committee took two measures in response. The first was to issue a separate document listing overdue reports. The second was to give wide publicity to the list at its end of session press conferences.

39. In its 1996 annual report (A/51/40) the Human Rights Committee expressed "its serious concern" that "more than two thirds of all States parties ... were in arrears with their reports", and noted that this "state of affairs seriously impedes [its] ability to monitor the implementation of the Covenant" (para. 45). 10/ The Committee has continued to seek new means by which to encourage delinquent States parties to submit reports. In addition to the regular sending of reminders and the holding of meetings between members of the Bureau of the Committee with the permanent representatives of the relevant States, the Committee began in 1994 to include a separate list in the main part of its annual report indicating those States that have more than one report overdue. In its 1996 report the Committee went further and "reserved the right to make public a list of [those States] during the press conference convened at the end of each session of the Committee" (para. 32).

40. Measures such as those resorted to by these two committees show an admirable faith in the extent of the readership of annual reports by committees and in the newsworthiness of delinquency by a State in its reporting to a United Nations body. Nevertheless, it is difficult to avoid the conclusion that they are unlikely to have a significant impact upon the behaviour of the States concerned. Thus, for example, in the case of the

Human Rights Committee, five States have each received 20 or more reminders over a period of 10 years or more and have failed to respond (A/51/40, para. 45).

41. Other responses might include an easing of the reporting requirements under certain circumstances. Thus, at its sixteenth session, the Committee on the Elimination of Discrimination against Women considered an oral report presented by one State party. The Committee emphasized, however, that it had done so on an exceptional basis and as a matter of courtesy to the delegation and insisted that the presentation of a written report be scheduled. 11/ The Human Rights Committee decided in 1996 that, "under very exceptional circumstances", when a report is overdue "because of material difficulties", the State party could be invited to send a delegation to discuss those difficulties or be asked to submit a provisional report dealing only with certain aspects of the Covenant (A/51/40, para. 32). Such initiatives raise two types of questions. The first is whether, from a pragmatic perspective, they are likely to succeed in enabling more States to report. Only time will provide a definitive answer, but it seems that a significant response rate could only come as a result of important, case-by-case, concessions in relation to the principle that all States parties must report in accordance with the general guidelines. That leads to the second question, which is whether real concessions (of the type that will act as an incentive to otherwise recalcitrant States) can be made without undermining the central tenets of the reporting system.

42. Another approach, which would be applicable across the board, rather than on an ad hoc basis, but at the same time permit a more tailored and flexible approach to reporting, would be to eliminate the obligation to provide comprehensive periodic reports, in the form in which they presently exist. This option is discussed below.

43. Broadly stated, there are two reasons why States do not report: administrative incapacity including a lack of specialist expertise or lack of political will, or a combination of both. In the first situation, repeated appeals are, almost by definition, unlikely to bear fruit. Instead, the solution lies in a more serious, more expert and more carefully targeted advisory services programme in relation to reporting. This is discussed briefly below.

44. In the second situation, a lack of political will translates essentially into a calculation by the State concerned that the consequences, both domestic and international, of a failure to report are less important than the costs, administrative and political, of complying with reporting obligations. In that case, the only viable approach on the part of the treaty bodies and/or the political organs is to seek to raise the "costs" of non-compliance. A failure to devise appropriate responses of this nature has ramifications which extend well beyond the consequences for any individual State party. Large-scale non-reporting makes a mockery of the reporting system as a whole. It leads to a situation in which many States are effectively rewarded for violating their obligations while others are penalized for complying (in the sense of subjecting themselves to scrutiny by the treaty bodies), and it will lead to a situation in which a diminishing number of States will report very regularly and others will almost never do so.

45. The key question, however, is what types of measures designed to raise the costs of non-compliance might be appropriate, potentially productive in terms of upholding the integrity of the system, consistent with the legal framework of the relevant treaty, and politically and otherwise acceptable. Various palliatives are available and have been canvassed elsewhere in this report. They include: the elimination of reporting and its replacement by detailed questions to which answers must be given; the preparation of a single consolidated report to satisfy several different requirements; and the much wider use of a more professional advisory services programme designed to assist in the preparation of reports. Ultimately, however, none of these might make a difference in hard-core cases. Under those circumstances the only viable option open to the treaty bodies is to proceed with an examination of the situation in a State party in the absence of a report. This has been done for a number of years by the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination has adopted a very similar approach. The situation has not yet become chronic for either the Committee on the Rights of the Child, because it is still much younger than the others, or for the Committee against Torture which has many fewer States parties than the other committees. And the Committee on the Elimination of Discrimination against Women has had so little meeting time, until very recently, that it was unlikely to take any steps that would increase its workload.

46. It seems inevitable, however, that each of these committees, and certainly the Human Rights Committee, will have to contemplate taking such a step sooner or later. While the precise legal basis for such measures will need to be rooted in the text of each of the relevant treaties, the principal foundation is to be found in a teleological approach to interpretation which acknowledges that any other outcome is absurd in that it enables a delinquent State party to defeat the object and purpose of the implementation provisions. In that regard, it is pertinent to recall that the General Assembly, in its resolution 51/87, specifically "encourage[d] the efforts of the human rights treaty bodies to examine the progress made in achieving the fulfilment of human rights treaty undertakings by all States parties, <u>without exception</u>" (emphasis added).

47. In implementing such an approach, the experience of the Committee on Economic, Social and Cultural Rights is instructive. Ample notice has been given to the States concerned and, in a majority of the cases taken up so far, reports which had been dramatically overdue have suddenly materialized. For the rest, it is particularly important that the Committee is in a position to undertake detailed research work and to be able to base its examination upon a wide range of sources of information. The resulting "concluding observations" must be detailed, accurate and comprehensive. If they are not, States can again be rewarded for a failure to report by a routine or mechanistic response which fails to establish genuine accountability in any way. In this respect it is not clear that the conclusions adopted to date in such cases by the Committee on the Elimination of Racial Discrimination meet such criteria.

C. The inadequacy of the current system to deal with the timely submission of reports

1. Inability to process reports due to be submitted

48. The present supervisory system can function only because of the large-scale delinquency of States which either do not report at all, or report long after the due date. This is hardly a satisfactory foundation upon which to build an effective and efficient monitoring system. Thus, for example, the Committee on the Elimination of Discrimination against Women noted in its 1994 annual report (A/49/38, para. 12) that if States parties reported on schedule it would need to consider 30 reports per session.

Table 2. Length of time required to review all State reports currently due, if they were to be submitted at the end of 1996

	Average No. of meetings per report	Meetings required to consider reports already due	Average No. of meetings per year	Average No. of meetings per year devoted to examining reports	No. of years required
ICESCR	3	3 x 115 = 345	58	45	7.6
ICCPR	3	3 x 114 = 342	85	45	7.6
CERD	2	2 x 401 = 802	55	33	24.3
CEDAW	2	2 x 189 = 378	49	18	21
CAT	2.2	2.2 x 67 = 134	36	20	6.7
CRC	3	3 x 71 = 213	85	54	3.9

49. In brief, the picture that emerges from table 2 is that if every State party with a report overdue under either of the Covenants were to submit that report tomorrow, the last to be received could not be considered, on the basis of existing arrangements, before the year 2003. At that point, the relevant committee would be considering an eight-year-old report and would have a huge backlog of subsequent reports pending.

50. An even more compelling way of looking at the situation is to assume that every State party to the Convention on the Rights of the Child were to submit a periodic (as opposed to initial) report, as required, every five years. In theory, this would require the Committee on the Rights of the Child to examine 187 reports over five years. At its present rate of examining reports it would require 3 meetings per report, or a total of 561 meetings. Divided over a five-year period, that would require 112 meetings per year devoted to reports. Currently, on the basis of meeting

for nine weeks in plenary session and three weeks in working groups, it is able to devote 54 meetings per year to the examination of reports. Thus, its meeting time would need to be at least doubled, making 18 weeks of meetings plus 6 weeks of working groups. At least half of the Committee of 10 members would thus need to spend 24 weeks a year in session, quite apart from all of the additional activities that that Committee has so far undertaken outside of its official meeting times. The resulting burden on the Secretariat, on conference servicing facilities and on translation, interpretation and editing services would be immense.

2. The problem of delays between submission and examination of reports

51. In its 1994 annual report the Committee on the Elimination of Discrimination against Women observed that there was "an average of three years between the time a State party submits its report and its consideration by the Committee". The Committee went on to observe that such a situation provides "a disincentive to report and leads to the need for the State to present additional information to update the report which, in turn, increases the volume of documentation that must be considered by the Committee" (A/49/38, para. 12). This analysis is still applicable in relation to most committees. Thus, on the basis of available figures, a report submitted in December 1996 to the Committee on the Rights of the Child would not be examined until January 1999. For the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, the respective dates would probably be July 1998 and May 1999.

52. The options available for responding to a situation which is clearly unacceptable to the committees and the States concerned, as well as to those whose human rights are the focus of attention, are examined later in this report. At this point, it is sufficient to observe that one option which is clearly unsatisfactory is to schedule a large number of reports for consideration in a very short time, so that each report receives only superficial consideration. Unless such an approach is preceded by very detailed preliminary work and demonstrates that it is still able to achieve convincing and accurate results, it risks going through the motions for their own sake and abandoning the raison d'être of the whole system, which is to promote respect for human rights and ensure genuine accountability.

D. Problems in relation to documentation

1. A fifty-page limit on State reports?

53. As noted at the beginning of this report, it has been proposed by conference servicing officials in Geneva, in addressing both the seventh meeting of chairpersons and individual committees in the course of 1996, that a limit of an average of 50 pages be imposed on the length of State party reports to be processed and translated. To the extent that such a limitation would apply to processing (copy-editing, clean typing and reproduction) as well as translating, it would even eliminate the option for a committee to be prepared to consider a longer report in the original language in which it is submitted. This proposal has yet to be fully implemented but its effects are already being felt in various ways. Although it is beyond the scope of this

report to address the possible implications of the proposal, two procedural matters are worthy of note since they bear on the modalities of future treaty body-related reform processes. The first is that both the chairpersons' meeting and the treaty bodies themselves have been provided with very little solid statistical information to substantiate the need for draconian measures of the type proposed. Indeed the message has, for the most part, been conveyed orally rather than in the form of a detailed written analysis which would provide a basis for careful consideration of alternative responses. The second is that the Centre for Human Rights has not provided any analysis of the alternatives that might be considered. Given the difficulty of obtaining information about the functioning of the system and the costs involved, the absence of such an analysis, or briefing paper, would seem to increase considerably the prospects for ill-informed and uncreative responses.

54. The incongruity of the proposed limitation is perhaps best illustrated by the fact that the general guidelines for the submission of periodic reports (CRC/C/58), adopted by the Committee on the Rights of the Child in October 1996, are 49 pages long. 12/ In other words, States parties would be asked to respond to 49 pages of questions and of lists of issues in relation to which information is required in the course of a report of precisely the same length. This is clearly impossible, and it is doubly so in the case of federal States which must report on the situation in relation to the different laws and practices applying in each of their constituent territories. Moreover, the suggestion that reports could be confined to 50 pages is entirely at odds with the trend in most of the committees to request ever more precise and detailed information in order to enable the experts to obtain a clearer picture of the situation. On the other hand, two committees (the Committee against Torture and the Committee on the Elimination of Racial Discrimination) have generally managed with comparatively brief reports. This is, however, primarily a function of the more restricted nature of their focus rather than of their greater frugality.

2. Ephemeral or unrecorded documentation

55. Another problem which is worthy of note concerns the increasing proportion of documentation which, although central to the dialogue in many cases, is of an ephemeral or officially unrecorded nature. In other words, governmental representatives submit detailed information, sometimes in the form of materials already published (and thus, in principle, available elsewhere) but more often in the form of specifically targeted information in response to questions raised or issues signalled in advance by the respective treaty bodies. Since this information is neither contained in the State party report itself nor reflected, except indirectly and in passing, in the summary records, it is effectively lost and is not part of any enduring or accessible record of the dialogue. Although it might have had a determinative influence upon the Committee's response, it is not available to any person who was not both present at the time and was privileged to gain access to the documentation.

56. As with many of the issues dealt with in this report, devising appropriate responses is rather more difficult than identifying the issues. The first step is for the materials included in the annual report to be more systematic and detailed in indicating the principal reference materials relied

upon in the examination of the report. The second step would be to develop a more systematic documentary archive to be maintained at least until the examination of the subsequent report of the same State party. But again, in the context of a treaty body secretariat which employs not a single skilled documentalist, has no satisfactory facilities for maintaining archives and has yet to focus at all on issues of this type, it is not clear that there is much use in making very detailed recommendations, beyond calling attention to the problem.

3. Delays in the production of summary records

57. Another problem confronting the treaty bodies is that the summary records are now produced in only two languages (English and French) and the translation into the second language (whichever one it might be) is generally significantly delayed. This is of particular significance for several reasons. The first is that, in response to budgetary and other concerns, each of the treaty bodies has eliminated from its annual reports the summary of the dialogue with each State party which was a consistent feature of the annual reports until quite recently. This could be done on the basis that there was no need to duplicate information which was any event provided, and in a more systematic fashion, by the summary records. The second is that the summary records constitute one of the most important elements in the process of accountability which provides the principal rationale for the process of dialogue. If the records are not accessible within a reasonably short period of time after the examination of the report and the adoption of the concluding observations, a significant part of the value of the undertaking may be lost.

58. By the same token, it is not clear that there is sufficient value-added by the publication, in the case of the Human Rights Committee, of a set of official records (previously known as the Committee's Yearbooks) reproducing all of the summary records and other already issued documentation. The Committee on the Elimination of Discrimination against Women has requested that further yearbooks be issued for it, in addition to those produced some years ago, and similar proposals have been made in relation to the Committee on the Rights of the Child. In a context of the generous availability of resources such undertakings are certainly desirable since they make the records more accessible for historical and related purposes. However, at a time of the utmost financial stringency when neither paper nor pencils can be provided in conference rooms for the use of expert members of the treaty bodies, such expenditures are surely not a priority.

59. In any event, their value has been radically reduced by the increased importance of electronic sources of information, especially through the Internet. While summary records of the treaty bodies are not yet available in that form, it is surely only a matter of time. Priority should therefore be accorded to that enterprise. For the reasons noted below, the advantages make the investment in the electronic form of the records far more rewarding than the production of prestigious dinosaurs such as the Yearbooks (official records). The first step should therefore be the transfer of the existing Yearbooks onto the electronic databases, and the second step should consist of a concerted effort to achieve the timely publication, again in electronic form, of the summary records as soon as they are available.

E. The development and use of electronic databases

1. The home page of the Centre for Human Rights

60. The approach advocated in relation to summary records is entirely consistent with one of the most encouraging recent developments overseen by the High Commissioner for Human Rights. On 10 December 1996 a major electronic database of human rights documentation was made available on the World Wide Web and is thus accessible through the Internet. 13/ In such form, the concluding observations, reports by States, and eventually the summary records will all be made available to literally millions of potential users. This contrasts dramatically with the situation in relation to both the mimeographed documents in their original form and the printed official records (Yearbook) volumes. All of these documents have a small print run and a very limited distribution network that rarely includes national-level NGOs, scholars in places outside the industrialized countries, and other key potential users. The costs of upkeep of a hard copy collection of treaty body documents is considerable and there are only a handful of libraries around the world which devote the resources necessary for the maintenance of an accessible and functional collection of such documentation. Moreover, the utility of the hard copy documents is very limited by comparison with that of the electronic versions which can be comprehensively searched, organized and selectively printed out in very little time.

61. Concern has justifiably been expressed that an emphasis on new technology will not necessarily cater for the needs of those with limited resources or living in countries which do not have ready or reliable access to the Internet. Such concerns need to be addressed, but it must also be recalled that the accessibility of printed ("hard copy") documents in such countries and to such individuals is currently close to zero and that even elites in such countries, whether governmental, academic or activist, invariably have difficulty getting access to printed United Nations documents. In this respect, far from reinforcing existing disparities in access to information, the Internet and its equivalents offer a unique opportunity to democratize access and to ensure the systematic availability of documentation which has hitherto been extremely difficult to obtain.

62. But the full potential of these developments, in terms of those currently without ready access, will only be realized if a deliberate strategy is devised for that purpose. This in turn will require the adoption of a more systematic, consultative and transparent process than has hitherto been developed. In that respect, the Centre for Human Rights could learn from two recent initiatives. The first is the "WomenWatch" project, undertaken jointly by the Division for the Advancement of Women, the United Nations Development Fund for Women (UNIFEM) and the International Research and Training Institute for the Advancement of Women (INSTRAW), which aims to conceptualize, design and implement a joint Internet space on global information on women, accessible through World Wide Web, gopher and e-mail technology. 14/ The project's aims include identifying best current practices, improving access, providing training, and developing cooperative links with other actors.

63. The Centre for Human Rights should convene an expert seminar for similar purposes in relation to human rights information and documentation. Adequate

resources should be devoted to ensure that the newly created Web site is developed further and kept fully up to date. Consideration should also be given to the appointment of an external expert advisory group to assist in relation to the development of electronic information activities, especially as they relate to the treaty bodies.

64. The second initiative from which the Centre should explore the lessons to be learned is the provision, by UNICEF, of notebook computers to all members of the Committee on the Rights of the Child. The computers are programmed to provide e-mail access and access to the key databases and documentation sources needed by members in carrying out their monitoring functions. If the experiment is a success, comparable measures should be taken in respect of members of the five other treaty bodies.

2. Broader access to ILO and UNHCR electronic databases

65. One of the curious features of current information technology developments which directly concern the treaty bodies is that one of the agencies which has moved the most rapidly and achieved some of the best results - the ILO - has persisted with a strategy which is no longer optimum and which now does a considerable disservice to the constituencies the organization aims to serve. It has developed an extensive and very sophisticated database, of major and direct relevance to various aspects of the work of the treaty bodies and the human rights field generally. But it has chosen only to make it available to external users by means of a CD-ROM which must be purchased and for which separate equipment, beyond a computer and an Internet connection, must be acquired. One result, for example, is that the database is unavailable to any members of the treaty bodies, to NGOs or scholars unless they make an individual purchase at considerable expense.

66. There also seems to be a significant time lag in relation to the availability of data generated by UNHCR, which is produced first for its CD-ROM ("Refworld") and subsequently, but rather more slowly, made available on its Web site. 15/ The income generated by this "user-pays" strategy may not be insignificant but the costs, in terms of unnecessarily restricted access to information and the resulting diminution of the reliance placed upon the work of the organizations, would seem to be considerable. It is to be hoped that both agencies, but the ILO in particular, will reconsider their existing strategy and make their very valuable resources available in as timely a fashion as possible to a far broader public.

F. Public information

67. The need for improved public information materials to be devoted to the work of the treaty bodies has been a constant theme of recommendations adopted in recent years. However, given the budgetary restraints upon the Secretariat, the cumbersome and costly procedures followed and the lack of the necessary human and other resources, it is not surprising that relatively little information about the treaty bodies has been produced. The Human Rights Committee, for example, has been calling for a number of years for the publication of a third volume of Selected Decisions of the Human Rights Committee under the Optional Protocol, 16/ without success. Volume 2 covers the period October 1982 to April 1988. A second volume of

Human Rights: A Compilation of International Instruments has been under preparation since 1992, and although the Department of Public Information reports that it "is now being updated", 17/ it has in fact never been published. Apart from the extremely valuable United Nations Action in the Field of Human Rights, 18/ published every five years, there is relatively little in print which is of direct relevance to the treaty bodies. The Professional Training Series is potentially the most serious and valuable set of publications. The 25 Fact Sheets issued to date may have been printed in large numbers but their overall utility, and the effectiveness of their distribution, would be unlikely to be rated highly by external experts.

68. Without wishing to underestimate the difficulties faced by those who labour with very few resources and much more limited political support than is usually acknowledged, it would seem that the publicity provided for the work of the various treaty bodies is usually unimaginative and not especially informative. It is far beyond the mandate of the independent expert to review in any detail the various alternative approaches that might be considered in the future. It must suffice to say that three avenues would seem worth exploring. The first is giving the treaty bodies a direct input into how a specified public information budget, earmarked for that purpose, should be spent. For that purpose an options paper should be prepared and discussed by the meeting of chairpersons on the basis of discussions in individual committees. The second is to acknowledge that the greatest need is for information to be made available at the grass-roots level, rather than in Geneva and New York where it seems likely the great majority of existing materials are disseminated. But this does not mean simply that there should be a more extensive distribution of brochures by the United Nations information centres. Rather, it means that a public information budget should be available to support grass-roots initiatives designed to disseminate information about the treaty bodies in culturally appropriate and more popular formats and media.

69. The third avenue is to explore the extent to which the preparation of publications, such as the Selected Decisions, can be entrusted to academic and other external institutions that are prepared to take them on. The publication could then be achieved commercially, at a cost which would be substantially less than having either the editorial or printing work done within the United Nations. This approach would also respond to calls by the Advisory Committee on Administrative and Budgetary Questions to explore alternative and less costly approaches to the publication of United Nations materials. The treaty body concerned could still insist on appropriate standards in relation to content and the publication process would be potentially much faster and certainly less costly.

70. In general, there would seem to be good reason to convene, from time to time, an external advisory group to review the human rights-related publications programme and make recommendations in relation to it. At present, the system is singularly lacking in transparency and opportunities for inputs from informed sources. The nature and quality of the resulting output faithfully reflects the closed and bureaucratic character of the process.

71. One minor matter that warrants attention concerns the request by the General Assembly in resolution 50/170 that the United Nations information centre in each country should make available a copy of the following: recent reports to the treaty bodies by that State, the summary records reflecting the examination of those reports and the relevant concluding observations adopted by the treaty bodies. While the Secretary-General has reported that a procedure has been put in place for this purpose (see A/51/45), he should be asked to submit a follow-up report describing the situation in practice. From informal reports by non-governmental organizations there is no reason to believe that an active programme of dissemination has been undertaken in relation to this material at the country level.

G. Advisory services

72. It has been suggested in a number of places in this report that the provision of "advisory services", or technical cooperation in the field of human rights, has a vital role to play in relation to those States which do not have the administrative capacity, technical expertise or financial resources required to prepare the reports they are legally obligated to provide under the relevant treaties. Equally, similar needs hamper the quest to move towards universal ratification.

73. One of 20 "substantive themes" identified for the advisory services programme is "treaty reporting and international obligations" (E/CN.4/1996/90, para. 23), but the independent expert has not been able to identify from the available documentation any case in which assistance has been provided specifically for either the undertaking of a survey of the necessary measures to be taken prior to ratification of a human rights treaty or the preparation of a report to a treaty body. The principal exceptions would seem to relate to situations such as Cambodia or Haiti in which a small part of a large assistance package has been devoted to such activities. While this assessment probably underestimates the extent of assistance provided for such purposes, it is clear that the programme as a whole does not accord sufficient priority to these activities. It may be replied that the initiative in such matters must rest with Governments and if they choose not to make requests there is little more that the programme can do. But the situation is one of "chicken and egg". In the absence of a well-resourced fund for this purpose, along with the identification of experts who are technically competent, and targeted suggestions that particular States should avail themselves of the assistance, there are likely to continue to be few requests. As a result, the advisory services programme will not make a significant contribution to the goals of reducing the incidence of non-reporting or improving the quality of reporting.

74. One activity which has been funded in the context of the advisory services programme is the organization of regional or subregional training courses in relation to reporting. It is not at all clear, however, that this approach is likely to be cost-effective. To take but one example, a regional training course on reporting obligations for countries of a particular region, held over five days in November 1996, cost the United Nations $143,800. The budget provided for the involvement of 30 government representatives, along with 6 consultants and 3 staff members. If each of the Governments in the region sent one representative, the achievement of an impact in each country concerned would depend upon the relevant individual having benefited

significantly from the project, being in a job which gives him or her responsibility for reporting, being kept in the same job long enough for the benefits to take effect, and having the time, commitment and skills required to convey some expertise or insights to others involved in reporting at the national level. While there may be some individuals who satisfy all these requirements, it seems unlikely to be the case in the majority of instances. The "multiplier effect" of a substantial expense is thus extremely limited. By contrast, a specially trained official (or consultant) could spend an entire month in the field providing carefully tailored training and advice to a wide range of individuals (both governmental and non-governmental) in a particular country at a cost of less than $15,000. Thus, concentrated assistance could have been supplied for one month each in ten different countries for the same amount of money, or probably less.

75. The problem of expertise has also yet to be addressed. It seems often to be assumed that members of the treaty bodies will have the necessary technical competence, pedagogical and drafting skills, and the availability to carry out such functions. Leaving aside the question of whether some conflict of interest might arise in such situations, there is clearly much to be said for hiring or training individuals with the requisite skills than relying upon the inevitably very uneven capacities of any given treaty body member. Given that the International Labour Organization has long had programmes involving regional advisers in the provision of such expert advice, it would be appropriate for the Centre for Human Rights to draw directly upon that experience and to explore the possibilities for cooperative training and advisory activities.

76. The High Commissioner for Human Rights should thus be requested to draw up a specific project designed to provide the necessary resources, both financial and technical, for the preparation of reports for those States which clearly lack the necessary resources to do so for themselves. The project should reflect lessons to be learned from the experience of the ILO and canvas the possibility of collaboration, as appropriate, with that body.

77. The Board of Trustees for the Voluntary Fund for Technical Cooperation should be requested to include the preparation of reports to the treaty bodies as a specific priority project. It is not clear that it falls within the priorities endorsed by the Board to date (see E/CN.4/1996/90, para. 47).

H. Special reports

78. A defining characteristic of the work of some of the treaty bodies in recent years has been an emphasis upon "special reporting" or "urgent procedures". The Human Rights Committee and the Committee on the Elimination of Racial Discrimination, respectively, have made significant use of these procedures aimed, in the words of the latter "at responding to problems requiring immediate attention to prevent or limit the scale or number of serious violations" (A/51/18, para. 26 (b)). These initiatives can be traced back to a proposal made by the Secretary-General in 1992 that ways should be explored "of empowering the Secretary-General and expert human rights bodies to bring massive violations of human rights to the attention of the Security

Council together with recommendations for action" (A/47/1, para. 101). Subsequently the fourth meeting of chairpersons noted the important role of the treaty bodies in seeking to prevent, as well as to respond to, human rights violations. They then stated that:

> "It is thus appropriate for each treaty body to undertake an urgent examination of all possible measures that it might take, within its competence, both to prevent human rights violations from occurring and to monitor more closely emergency situations of all kinds arising within the jurisdiction of States parties. Where procedural innovations are required for this purpose, they should be considered as soon as possible" (A/47/628, para. 44).

79. The independent expert participated actively in the consensus on that statement, which has since been endorsed by the General Assembly and subsequent meetings of chairpersons. Today, however, the expert questions the wisdom of the manner in which this mandate has been applied. It is frustrating for a treaty body to have to remain inactive in the face of massive violations and it risks sending a signal of impotence, perhaps disdain and certainly marginality. On the other hand, the invocation of relatively formalist and inflexible procedures directed at States in which chronic violations are occurring in a context of crisis or major armed conflict would seem unlikely to achieve a great deal. Experience to date seems largely to confirm this conclusion. While there should not and probably could not be any hard and fast rules in this regard, and while the treaty bodies should retain appropriate flexibility, there is much to be said for maintaining what has been referred to as "a division of labour ... whereby the special rapporteurs, representatives or experts [of the Commission on Human Rights, etc.] would remain responsible for urgent appeals, whereas the treaty bodies would focus mainly on State party reports" (E/CN.4/1997/3, para. 43).

III. MEDIUM-TERM AND LONG-TERM REFORM ISSUES

A. Introduction

80. It is now almost eight years since the independent expert first suggested that consideration might be given to the preparation of consolidated reports to the treaty bodies as well as to the eventual consolidation of the existing treaty bodies into "one or perhaps two new treaty bodies". He also called for "a sustained exchange of views" on these proposals (A/44/668, paras. 179 and 182). Since that time, academic and other observers have taken up the challenge 19/ while the treaty bodies themselves, the meetings of chairpersons and the policy organs have all remained virtually silent. There is good reason for the silence of the treaty bodies. Their members are in the process of investing considerable time and energy into making the existing procedures work and they can hardly be expected to be enthusiastic about the elimination of either the procedures they are struggling to perfect or of those committees as they currently exist. It is less clear why the policy organs have remained reluctant to engage in the debate. It is suggested that the trends documented in this report have already made such debate urgent and that, in any event, the unsustainability of the existing system will have compelled radical changes of one type or another within less than a decade.

The only real question is whether they will be of an ad hoc, reactive and incomplete nature or whether they will have been planned logically and systematically.

B. The nature of the emerging challenge

81. The information and analysis contained in this report support a number of conclusions as to the future evolution of the treaty body system. Over the course of the next decade, close to universal ratification of the six core treaties is likely to be achieved. States will be under increased pressure to honour their reporting obligations and significant technical and financial assistance will be made available to help them to do so. States which do not report will often be subject to review anyway. States will be expected to produce six reports, to engage in six separate "constructive dialogues", to answer to additional ad hoc requests from six committees, and to respond to complaints emanating from perhaps four or more separate communications procedures. They will also be expected to take full account of general comments (or their equivalents) emanating from six different committees and to respond to increasingly detailed concluding observations from the same number of committees.

82. In addition to these obligations, within a decade a significant number of countries may well be required to report under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. That would add a seventh reporting procedure and yet another committee and will require States parties to report in relation to the most complex, detailed and lengthy of all of the human rights treaties.

83. But a growing burden upon States will not be the only consequence. The treaty bodies will need to at least double their existing meeting time so that the Committee on the Rights of the Child alone would be meeting for close to six months of every year. Committees which already have a very large backlog of unexamined communications will be joined by others in the same situation and together they will need to find the time and the expertise to deal with the more and more complex issues which, in the nature of things, will inevitably be brought before them. The size of the secretariat servicing the treaty bodies would need at least to be doubled just in order to maintain existing levels of service (which almost every treaty body has condemned as entirely inadequate). The costs of conference servicing (especially translation of documents and interpretation) will rise exponentially, thus making major additional demands upon resources that are presently subject to dramatic cuts. Domestic non-governmental organizations would rapidly lose interest in reporting to a different treaty body every year and their international counterparts will be unable to keep up with the demands emanating every year from one treaty body or another in relation to every country. The media, both national and international, are likely to become even less interested than is currently the case in relation to such frequent, and most likely superficial, procedures.

84. The members of the treaty bodies would be required to spend between one third and one half of their time in Geneva or New York, for which some (members of the Human Rights Committee, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child)

will receive US$ 3,000 per year (apart from their daily allowances) and the others (members of the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination and the Committee against Torture) will receive nothing (apart from the same allowances). In light of such demands, committee membership will be feasible only for governmental officials paid by their national authorities (a situation unlikely to guarantee either independence or expertise), academics subsidized by their Governments (since in today's climate of budget cuts and a user-pays approach most universities are unlikely to be prepared to subsidize international service for half the year), or retirees.

C. A review of options

85. In essence, there would seem to be four options available to States in dealing with such a scenario. The first is to dismiss the concern as alarmist and misplaced on the ground that the situation will not in fact evolve in this way. States will not move towards universal ratification; they will continue to be chronically overdue in reporting; and they will become increasingly blasé in their dealings with the treaty bodies. The response by the latter will remain essentially as it is today and, somehow, existing resources will be used more efficiently in order to enable the maintenance of the status quo. The number of complaints procedures will not increase and the number of communications will stabilize. And the migrant workers convention will not enter into force. Over time, this option will lead to a reporting system that will have become little more than a costly charade, since it will be unable to cope in any meaningful way with the various functions entrusted to it.

86. The second option would amount to the fulfilment of the dreams of some reformers and of most budget-cutters: the treaty bodies will undertake far-reaching reforms of their existing procedures, and will manage from within existing resources. Extensive authority will be delegated to the Secretariat to undertake preliminary report processing. The latter will be staffed largely by interns, junior professional officers (JPOs) paid for on a voluntary basis by the industrialized countries, and by individuals from other countries sponsored by foundations or their own Governments. Individual committee members will be responsible for drafting assessments which will be reviewed in small working groups and, except in especially controversial cases, will be rapidly endorsed in plenary. Any "dialogue" will take place largely in writing. No report would be considered in plenary for more than one or two hours and each expert would be limited to five minutes' speaking time (thus making a total of 90 minutes in the case of the two Covenant-related committees, for example). Communications will be processed in a similar manner. Summary records will be dispensed with, and translation will only be available for the final products of the committees. Interpretation will be available only for plenary sessions and the remaining work will be done by heterogeneous language groups working overwhelmingly in English.

87. Apart from the difficulty of achieving any of these reforms, the main problem with this option is that it would require a radical change in many of the assumptions on the basis of which the current system has been developed. For the most part, States have shown no preparedness to make such changes.

Moreover, the quality of the resulting outcomes, as well as their ability to command respect and generate the desired domestic responses, is unlikely to be high.

88. The third option is the provision of greatly enhanced budgetary resources to support all aspects of the procedures with a view to more or less maintaining the status quo. Funding would be provided for increased Secretariat staffing, translation and interpretation facilities, and a large technical cooperation budget would be allocated to fund an extensive array of advisory services designed to enable States to meet their extensive reporting obligations. Even leaving aside the question of whether this would be a workable approach in practice, current as well as foreseeable future budget trends would seem to be moving in the opposite direction to that required.

89. The fourth option is a more complex one, drawing on elements of the other options, and based primarily upon the adoption of some or all of the reforms canvassed below.

D. Consolidated reports

90. The interim report by the independent expert outlined a proposal for the preparation of a single consolidated report by each State party, which would then be submitted in satisfaction of the requirements under each of the treaties to which the State is a party. That proposal is for individual States to consider and act upon. It does not require endorsement or other formal action by any United Nations body or the treaty bodies. The detailed analytical study called for by the General Assembly in resolution 51/87 will, when completed, assist in the preparation of any such consolidated reports. Ultimately, the questions and concerns that have been raised can only be answered definitively on the basis of concrete efforts to produce and work on the basis of such reports.

E. Elimination of comprehensive periodic reports in their present form

91. Another proposal, previously foreshadowed by the independent expert but not developed in any detail, would be to eliminate the requirement that States parties' periodic reports should be comprehensive. Such an approach would clearly not be appropriate in relation to initial reports. Similarly, it might be better suited to the situation of some treaty bodies than others, and might not be applied in all cases. The broader the scope of a treaty, the more appropriate it would seem to be to seek to limit the range of issues which must be addressed in a report. In effect, the reporting guidelines would be tailored to each State's individual situation. In many respects, it is a logical extension of an approach followed by the Human Rights Committee since 1989.

92. Since there are various formulas which might be adopted, the following process is only indicative. It would begin with a decision by the committee at session A to draw up a list of questions at session B. In the intervening period it would invite submissions of information from all relevant sources and would request the Secretariat to prepare a country analysis. The pre-sessional working group could then meet, perhaps immediately before or

during session B, and draft a specific and limited list of questions. After endorsement by the Committee at session B the list would be forwarded immediately to the State party with a request for a written report to be submitted in advance (in sufficient time to enable translation) of session C or D. Such a procedure would: focus the dialogue on a limited range of issues; entirely eliminate the need to produce a lengthy report covering many issues of little particular import in relation to the country concerned; ensure that issues of current importance are the principal focus; guarantee that a report would be examined on schedule; enable individuals with expertise in the matters under review to participate in the delegation; reduce the number of ministries directly involved in report preparation; enhance the capacity of expert members of the committees to be well prepared for the dialogue; and provide a strong foundation for more detailed and clearly focused concluding observations.

93. It is therefore recommended that each committee should consider the extent to which all or some of its principal supervisory functions could be conducted on the basis not of general reports based on universally applicable reporting guidelines but of more limited and specially tailored requests for reports as described above.

F. Towards a consolidation of the treaty bodies

94. Some of the arguments for and against this reform have already been explored in the independent expert's 1989 report (A/44/668, paras. 182-183). For that reason, they will not be repeated here. Given the limitations of space it must suffice to note in this context that while the legal and procedural problems inherent in such an initiative would not be negligible, the prior issue is whether there is the political will to begin exploring in any detail the contours of such a reform. If that will were manifest, the technical challenges would be resolvable. It is therefore recommended that consideration be given to the convening of a small expert group, with an appropriate emphasis upon international legal expertise, to prepare a report on the modalities that might be considered in this respect.

G. The desirability of additional proactive measures

95. In addition to examining the possibility of steps to reduce the existing number of treaty bodies, it is important for United Nations organs which are involved in the design of new procedures to bear in mind the desirability of limiting the number of additional bodies to be created. Viewed in isolation, and on their individual merits, proposals to establish new, and improved, mechanisms are inevitably attractive. This attraction should, however, be balanced against the impact on the system as a whole of new bodies competing for scarce resources and perhaps, in some respects at least, unnecessarily duplicating the demands upon States parties. At least two current endeavours might be relevant in this respect.

96. The first concerns a procedure which has already been finalized and enshrined in a treaty. Article 72 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides for the election of a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families within six months of the

Convention's entry into force. This occurs when there are 20 States parties. Although it was adopted six years ago (in December 1990), as at 1 November 1996 there were only seven States parties. By acting now to amend the treaty so as to provide that the supervisory functions which the Convention entrusts to a new committee would instead be performed by one of the existing committees (presumably either the Committee on Economic, Social and Cultural Rights or the Human Rights Committee) the United Nations could avoid the expense of establishing an entire new supervisory apparatus, States parties could avoid increasing the number of committees to which they must report and the number of occasions on which reports must be presented and evaluated, and the number of States which would have to ratify the amendment would be minimal. A failure to act now will only result in exacerbating a situation that most States already consider to be unwieldy. Moreover, one of the major obstacles to reform in all such matters is the resistance of those (including experts, Secretariat officials, Governments, NGOs, etc.) with a vested interest in the maintenance of the status quo. Action taken at this stage would encounter comparatively very little resistance from such sources. But if delayed, it will probably become impossible.

97. The second example concerns the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the drafting of which is currently being undertaken by a working group of the Commission on Human Rights. The protocol would, inter alia, provide for visits to places of detention by an expert body entrusted with that function. At its most recent session the working group took note of two different views as to the relationship, on the one hand between the new instrument and the existing Convention, and on the other hand between the proposed new subcommittee and the existing Committee against Torture. Persuasive arguments were put forward in favour of the instrument being kept quite separate from the Convention and of the sub-committee being entirely independent of the Committee (see E/CN.4/1997/33, paras. 14, 16, 19). But whatever the undoubted merits of those proposals, they would contribute very significantly to the further proliferation of instruments and committees, while doing nothing to ameliorate the present situation. A more appropriate solution would seem to be to arrive at a formula by which States which accepted the new procedures would be exempted from most, if not all, of their reporting obligations under the Convention and to explore all possible formulas by which the members of the Committee could serve on the new mechanism as well. This would seem to be a case in which the Secretariat should be requested to prepare an analytical paper exploring different options in a creative rather than mechanistic fashion.

H. Amending the treaties

98. Since the submission of the first report on treaty body reform, in 1989, amendments to three of the six treaties have been approved by the respective Meetings of the States Parties and endorsed by the General Assembly. They seek to ensure that the activities of both the Committee on the Elimination of Racial Discrimination and the Committee against Torture are financed from the regular budget of the United Nations (rather than wholly or partly by the States parties as currently provided for in the respective treaties) and to permit the Committee on the Elimination of Discrimination against Women to meet for longer than the two weeks annually specified in the Convention. A

fourth proposed amendment would expand the membership of the Committee on the Rights of the Child from 10 to 18. The fact that both the respective Meetings of States Parties, as well as the General Assembly, have approved these amendments is an indication of the need for reform and of the preparedness of Governments to endorse such reforms.

99. Despite this clear consensus none of the amendments has yet entered into force and the prospects that they will do so in the foreseeable future must be considered slight. Thus, for example, over a period of four years only 20 of the 148 (as at 19 February 1997) States parties to the International Convention on the Elimination of All Forms of Racial Discrimination had accepted the amendments. In the case of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 20 of 101 States parties had done so (see E/CN.4/1997/73, para. 7). The problem is not that States parties are opposed to the amendment or that they are reluctant to see them brought into force. This is illustrated by the fact that every State party stands to gain financially from the amendments, since the costs involved will then be spread among the entire membership of the United Nations, rather than falling only on the parties to the relevant treaty. It is thus the non-States parties that would have a financial incentive to oppose such amendments, but they have chosen not to do so when called upon to vote in the General Assembly. Rather, the problem lies in the process of satisfying all of the domestic legal and political requirements needed to approve an amendment to a treaty. It is apparent that they are considered by many Governments, all of whom are confronted with an ever-increasing volume of international agreements to "process", to be too time-consuming and cumbersome to be worth the effort.

100. To the extent possible, the General Assembly has, in each instance, authorized temporary measures to ameliorate the situation in the intervening period. Such flexibility is indispensable, even though it might have the unintended consequence of further discouraging States parties from taking the domestic steps required to effect their legal acceptance of the amendments.

101. Several recommendations emerge from this situation:

(a) All future human rights treaties should provide for a simplified process to be followed in order to amend the relevant procedural provisions. While the specific endorsement of this proposal by the Commission on Human Rights could not be binding in the context of any future negotiations it would constitute a clear policy guideline and help to facilitate the adoption of such flexibility in the future;

(b) A report should be requested from the Legal Counsel which would explore the feasibility of devising more innovative approaches in dealing with existing and future amendments to the human rights treaties;

(c) The General Assembly should request the Meetings of the States Parties to the relevant treaties to discuss means by which the States concerned might be encouraged to attach a higher priority to ratification of the amendments already approved;

(d) Consideration should be given immediately to amending the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in line with the recommendation made below;

(e) In view of the agreement of the Meeting of States Parties and of the General Assembly in 1992 to amend article 8, paragraph 6, of the International Convention on the Elimination of All Forms of Racial Discrimination to eliminate the responsibility of the States parties for the expenses of the Committee members, action should now be taken to write off the continuing backlog of contributions owed for that purpose. At present, 57 States parties owe a total of US$ 225,506, or an average of just under $4,000 each (see A/51/430, annex II). Given that these assessments are now anachronistic and that the cost incurred by the United Nations of calculating, updating and reporting on their non-payment will soon exceed the amount involved, agreement should be sought to cover the outstanding amount from the regular budget and close the file. For legal and policy reasons, it should be indicated that no precedent of broader application is thereby created.

IV. OTHER ISSUES

A. The unmentionable language question

102. The question of languages has gone largely unaddressed in this report. For the most part, this is merely an accurate reflection of the inability of the United Nations and its Member States to come to grips with one of the most controversial and enduring issues confronting the Organization as a whole. Unfortunately, it is also one which is of particular importance to the treaty bodies. Any attempt by the independent expert to resolve the dilemmas would be both presumptuous and doomed to failure. Nevertheless, it is appropriate to proffer a few pertinent observations.

103. In the first place, the treaty bodies have been compelled by resource constraints and decisions taken elsewhere to privilege the two principal working languages of the Secretariat. This is reflected in the production of summary records and press releases, and in the vast majority of drafting exercises. Simultaneous interpretation into languages other than Spanish, unless specifically requested, seems to be increasingly less common in the day-to-day work of the treaty bodies. Secondly, the de facto dominance of English as the main working language of the committees has increased very significantly in the past few years. While this may be regrettable in terms of the maintenance of linguistic equality and diversity it is largely a reflection of national trends which are outside the control of the treaty bodies. These trends seem likely to accelerate in the years ahead as a result of the emphasis upon English in business, information technology, science, media and other spheres of activity. Thirdly, for a variety of reasons well beyond the control of the United Nations, English language materials tend to predominate in the rapidly growing volume of information which makes up the background materials available to the treaty bodies in their examination of individual State reports.

104. Official responses within the United Nations to these trends have been somewhat contradictory. On the one hand, the General Assembly has reaffirmed

its strong commitment to the principle of linguistic diversity, and the Secretariat has attached renewed emphasis to an old rule by which a document cannot be issued in any language until it is available in all. At the same time, various policies and practices encourage the treaty bodies to operate with as few languages as possible. The very rapidly increasing number of individuals, groups and agencies obtaining access to the documentation of international organizations by electronic means are, and are virtually certain to continue to be, significantly advantaged if they can work in English rather than in any other language.

105. The official rules are appropriate reflections of a commitment to multilingualism and would, in a context of adequate resources, help to maintain an appropriate balance. But in a situation of dire financial stringency the resulting inflexibility will, on the one hand, wreak havoc and on the other, provoke resort to ever more creative and devious strategies to circumvent unworkable rules. Such strategies invariably add to overall costs and, at least in the longer term, generate a range of inefficient, opaque and counter-productive practices. Understandable resentment of the extent to which extraneous factors have tended to undermine the policy of language equality has tended to stifle efforts to identify a range of medium-term and long-term strategies which might respond to emerging realities in a more nuanced manner.

106. In the context of the treaty bodies the importance of maintaining linguistic diversity is, for many reasons, beyond doubt. By the same token, in the absence of a substantial increase in funds for interpretation, there is a clear need for the different committees to explore ways in which working groups and other non-plenary meetings can be held without official translation. Greater emphasis should be attached to the ability of nominees for election to the treaty bodies to work in at least one, and preferably two, of the three major languages. Ways will have to be found in which the content of materials available in only one language can be drawn upon more efficiently for the benefit of the whole committee. Consideration will need to be given to delegating certain responsibilities to working groups capable of working without translation. While these and other more innovative and flexible steps will probably be considered only reluctantly, necessity will have its way sooner rather than later.

B. Cooperation with the specialized agencies and other bodies

107. Cooperation between the specialized agencies and the treaty bodies remains more problematic than is generally recognized. There are several outstanding examples of such cooperation, most notably between the Committee on the Rights of the Child and UNICEF, ILO, UNESCO and UNHCR, and between the ILO and several of the other treaty bodies. The overall situation remains unsatisfactory, however. There have been many calls for consultation in order to identify the most productive and sustainable forms of cooperation, but little has resulted. As noted above, a request by the sixth meeting of chairpersons for such a discussion to take place at a high level at the seventh meeting (in 1996) resulted in the active involvement of very few agencies and an inability to take any measures of consequence in relation to this issue. Similarly, repeated requests by the Commission on Human Rights, contained in resolutions adopted since 1993, 20/ calling for an expert seminar

to be organized in conjunction with the international financial institutions have resulted in no action by the Centre for Human Rights despite the willingness of the World Bank to proceed. While the High Commissioner for Human Rights held a meeting in July 1996 with the President of the World Bank, this has not led to any concrete results in relation to the work of the treaty bodies. 21/ As a result, important opportunities are being missed.

108. In order to remedy this situation it is recommended that the Commission on Human Rights should request the High Commissioner to convene a high-level meeting over a period of two days between senior representatives of the key specialized agencies and other bodies (including ILO, WHO, FAO, UNESCO, UNICEF, UNHCR, UNDP, UNFPA and the World Bank), senior staff of the Centre and the chairpersons of the six treaty bodies. In order to minimize costs and capitalize on other coordination efforts, the meeting should take place immediately before or after one of the annual meetings of the chairpersons. The purpose should be to explore the most constructive, appropriate, cost-effective, and mutually rewarding means of cooperation between these bodies and the human rights committees.

C. The quality of concluding observations

109. In 1990, the Committee on Economic, Social and Cultural Rights pioneered the practice of adopting concluding observations which reflected the views of the Committee as a whole, were structured in a systematic fashion and sought to be as specific as possible. Although it was the Human Rights Committee which, in 1984, had first made use of the phrase "concluding observations", it was not until 1992 that that Committee began to adopt collective evaluations of the report of each State. The Committee on the Elimination of Racial Discrimination followed the example in 1993. Prior to this development all of the effort required on the part of the relevant Government, the United Nations, the treaty body and other interested parties culminated in little more than a few disparate, sometimes inconsistent, observations made in the name of individual members of the committees. While the present approach thus constitutes a major step forward there is still considerable room for improvement in the quality of concluding observations, especially in terms of their clarity, degree of detail, level of accuracy and specificity. This will require, inter alia, a more sustained expert contribution to the process by the Secretariat. A marked improvement in the level of sophistication of concluding observations is indispensable if the reporting process is ultimately going to justify the expense and effort involved.

V. PRINCIPAL RECOMMENDATIONS

110. This section summarizes some of the recommendations made in the report.

111. The goal of achieving universal ratification of the six core treaties has been affirmed frequently. Concrete measures aimed at making it a reality are needed. They should include: (a) consultations with the leading international agencies to explore their potential involvement in a ratification campaign (para. 32); (b) the appointment of special advisers on ratification and reporting and the earmarking of funds for those purposes (paras. 33-34); (c) special measures should be explored to streamline the

reporting process for States with small populations (para. 35); and (d) particular attention should be paid to other substantial categories of non-parties.

112. Non-reporting has reached chronic proportions. In addition to considering reforms to the overall system (noted below), a new specially tailored project for the provision of advisory services should be implemented. In responding to cases of persistent delinquency, all treaty bodies should be urged to adopt procedures which lead eventually to the examination of situations even in the absence of a report (paras. 37-45). Such an approach should reflect thorough research and lead to detailed, accurate and comprehensive "concluding observations" (para. 47).

113. The present reporting system functions only because of the large-scale delinquency of States which either do not report at all, or report long after the due date. If many were to report, significant existing backlogs would be exacerbated, and major reforms would be needed even more urgently (paras. 48-52).

114. Proposed documentation limits are unworkable within the context of existing procedures. The issue needs to be dealt with in a far more transparent manner than has so far been the case and full justification for any cuts need to be provided. The Secretariat should draw up a detailed options paper to enable the committees to consider measured and innovative responses (paras. 53-54)

115. The extent of documentation which is central to the dialogue but which is nowhere officially recorded is an important problem and calls for appropriate measures to be devised by the Secretariat (para. 55). The preparation of summary records is an indispensable element in the system and their timely preparation should be accorded priority. The continued production of bound and edited volumes of Official Records of the Human Rights Committee (previously known as Yearbooks) is difficult to justify at a time of financial stringency (para. 58). Priority should be accorded to transferring the existing data on to electronic databases and ensuring the timely publication, including in electronic form, of all summary records as soon as they are available (para. 59).

116. The new home page of the High Commissioner/Centre for Human Rights constitutes an unduly delayed but very welcome development. It should be maintained and expanded and a strategy to widen access should be devised. Future development of the database should reflect a more systematic, consultative and transparent process than has hitherto been the case. An expert seminar should be convened for that purpose and an external advisory group appointed (paras. 60-64). The ILO should consider making its very valuable database available on the Web to the human rights community and others (para. 65).

117. The public information materials relating to the work of the treaty bodies are highly inadequate. The treaty bodies should be given a direct input into future decision-making in this regard. A public information budget should be made available to support grass-roots initiatives designed to disseminate information about the treaty bodies in culturally appropriate and

more popular formats and media. Partnerships with academic and other external institutions should be explored in order to enhance the publications programme. An external advisory group should be asked to review the human rights-related publications programme and make recommendations (paras. 66-70). The Secretary-General should report on the actual availability of treaty body-related materials at United Nations information centres (para. 71).

118. The advisory services programme has not provided sufficient support for surveys required prior to ratification of a human rights treaty or for the preparation of reports by States in need of assistance. Regional and subregional training courses in relation to reporting are unlikely to produce results commensurate with their cost. A specially designed programme should be devised to address the needs in this area and it should be accorded priority (paras. 72-77).

119. The effectiveness of "special reports" and "urgent procedures" should be carefully evaluated by the committees concerned. At present, the value they add seems low. In general, the division of labour between the treaty bodies and special mechanisms should be maintained (paras. 78-79).

120. In light of current trends the existing reporting system is unsustainable (paras. 81-84). Four options are available to States: (a) to dismiss the concern as alarmist and take no action; (b) to urge the treaty bodies to undertake far-reaching reforms and adapt to cope with existing and new demands from within existing resources; (c) to provide greatly enhanced budgetary resources to sustain the status quo; (d) to combine some elements of (b) and (c) with the adoption of some far-reaching reforms (paras. 85-89). The latter could include: the preparation of "consolidated reports" (para. 90); elimination of comprehensive periodic reports in their present form and replacement by reporting guidelines tailored to each State's individual situation (paras. 91-93); and a consolidation (reduction) of the number of treaty bodies (para. 94). If the political will exists in relation to the latter, a small expert group should be convened to examine modalities. Proactive measures should also be considered, including amending the migrant workers convention to entrust the supervisory functions to an existing committee and giving more systematic consideration to the institutional implications of the proposed optional protocol to the Convention against Torture (paras. 96-98).

121. The procedural provisions of human rights treaties need to be made more susceptible to amendment. Various recommendations are suggested (para. 101). Constructive attention needs to be given to the taboo subject of working languages (paras. 102-106). Existing arrangements for cooperation with the specialized agencies and other bodies have been improved in some respects but remain very inadequate. The High Commissioner should convene a high-level meeting to explore better means of cooperation with the treaty bodies (para. 108).

122. Treaty bodies must strive to further improve the quality of their "concluding observations", in terms of their clarity, degree of detail, level of accuracy and specificity (para. 109).

Notes

1/ Its report is in E/CN.4/1990/39.

2/ C. Tomuschat, "Human Rights, States Reports", in R. Wolfrum and C. Philip (eds.), United Nations: Law, Policies and Practice (Munich, Beck and Dordrecht, Martinus Nijhoff, 1995), vol. 1, p. 631.

3/ Bayefsky, "Making the Human Rights Treaties Work", in L. Henkin and J.L. Hargrove (eds.), Human Rights: An Agenda for the Next Century, Studies in Transnational Legal Policy No. 26 (Washington D.C., American Society of International Law, 1994) p. 229 at p. 264.

4/ Bayefsky, "Report on the UN Human Rights Treaties: Facing the Implementation Crisis", in First Report of the Committee on International Human Rights Law and Practice, International Law Association, Helsinki Conference (1996), p. 11.

5/ Ibid., p. 12.

6/ E.g. M. Banton, International Action Against Racial Discrimination (Oxford, Clarendon Press, 1996); M. Craven, The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development (Oxford, Clarendon Press, 1995); M. O'Flaherty, Human Rights and the UN: Practice Before the Treaty Bodies (London, Sweet and Maxwell, 1996); E. Verhellen, (ed.), Monitoring Children's Rights (The Hague, Martinus Nijhoff, 1996); and D. Harris and S. Joseph (eds.), The International Covenant on Civil and Political Rights and United Kingdom Law (Oxford, Clarendon Press, 1995).

7/ Bayefsky, note 4 above, p. 11.

8/ Ibid., p. 12.

9/ Based on information contained in World Bank, From Market to Plan: World Development Report 1996 (New York, Oxford University Press, 1996), Tables 1 and 1a.

10/ The Committee had already adopted an almost identical statement the year before (A/50/40, para. 58).

11/ Press Release WOM/950, 31 January 1997, p. 9.

12/ The figure of 49 pages refers to the English language version. The others are presumably even longer.

13/ The address is <www.unhchr.ch>.

14/ Report of the Expert Workshop on WomenWatch: Global Information through Computer Networking Technology in the follow-up to the Fourth World Conference on Women, New York, 26 to 28 June 1996, Annex II.

15/ Because UNHCR operates in a great number of situations in which electronic communications facilities are either non-existent or wholly unreliable it has a much stronger justification for continuing to attach importance to CD-ROM technology than does the ILO.

16/ United Nations publications, Sales No. E.84.XIV.2 and E.89.XIV.1.

17/ A/51/558, para. 24 (b).

18/ United Nations publication, Sales No. E.94.XIV.11.

19/ See Y. Le Bouthillier and D. Rouget, "La procédure des rapports périodiques en application des traités relatifs aux droits de la personne: L'aprés-conférence de Vienne", Annuaire canadien de Droit international [1994] 173, at 212.

20/ Commission on Human Rights resolutions 1993/14, para. 18, 1994/20, para. 17 and 1995/15, para. 17.

21/ See A/51/45, para. 22, in which no specific reference is made to the work of the treaty bodies in describing the principal areas of cooperation to be pursued in future. Although the chairpersons were informed in September 1996 that a further meeting would take place in November 1996, by March 1997 no further meeting had been held.